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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 201023-0279]

RIN 0648-BK06

Modification of Deadlines Under the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues this interim final rule to revise the regulations implementing the import provisions of the Marine Mammal Protection Act (MMPA). This interim final rule extends, by one year, the five-year exemption period to end December 31, 2022, and changes the deadline for comparability finding applications from March 1 of the year of expiration of a comparability finding to November 30 of the year prior to the expiration of a comparability finding, moving the comparability finding application deadline to November 30, 2021.

DATES: This interim final rule is effective [*insert date of publication in the FEDERAL REGISTER*]. Written comments must be received by 5 p.m. Eastern Time on [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0127, by the following methods:

(1) *Electronic Submissions*: Submit all electronic public comments via the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Go to the URL <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0127>, and click the “Comment Now!” icon, complete the required fields and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Anyone who is unable to comment through <http://www.regulations.gov> may contact the **FOR FURTHER INFORMATION CONTACT** below to discuss potential alternatives for submitting comments.

FOR FURTHER INFORMATION CONTACT: Nina Young, Office of International Affairs and Seafood Inspection, NMFS at Nina.Young@noaa.gov or 301–427–8383.

SUPPLEMENTARY INFORMATION:

Background

In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions (section 101(a)(2)) of the MMPA (hereafter referred to as the MMPA Import Provisions), which prohibit the import of fish or fish products from commercial fishing operations that result in the

incidental mortality or serious injury of marine mammals in excess of United States standards. Specifically, this rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in its fisheries producing fish and fish products exported to the United States. Fish and fish products from export and exempt fisheries identified by the Assistant Administrator for Fisheries in the List of Foreign (LOFF) can only be imported into the United States if the harvesting nation has applied for and received a Comparability Finding from NMFS. The 2016 final rule established procedures that a harvesting nation must follow and conditions it must meet to receive a Comparability Finding for a fishery. The rule also established provisions for intermediary nations to ensure that such nations do not import and re-export to the United States fish or fish products that are subject to an import prohibition.

Exemption Period

Under the MMPA Import Provisions, NMFS established an initial five-year exemption period similar to the Interim Exemption for domestic fisheries that occurred in 1988 prior to implementation of the framework for addressing marine mammal bycatch in U.S. commercial fisheries. Currently, the exemption period expires December 31, 2021. This interim final rule would extend the exemption period one year to end December 31, 2022. During the exemption period, the prohibitions of the MMPA Import Provisions do not apply to imports from the harvesting nation. NMFS established the five-year exemption period to provide nations with adequate time to assess marine mammal stocks, estimate bycatch, and develop regulatory programs to mitigate that bycatch

NMFS is extending the exemption period by one year. This change is warranted because foreign nations have experienced delays or interruptions in the implementation of programs to comply with the MMPA Import Provisions because of the coronavirus pandemic. Necessary diversion of resources in response to the pandemic has resulted in significant disruptions to foreign government operations for nearly every nation exporting seafood products to the United States. These disruptions included inability to access government buildings, lack of telework capabilities, and inability to access data requested to meet the MMPA Import Provisions benchmarks. Additionally, legislative processes were suspended or postponed in some nations, preventing the adoption of laws aimed at implementing regulatory provisions necessary for nations to develop regulatory programs comparable in effectiveness to the U.S. regulatory program. There were also disruptions to scientific research cruises, fishery observer or bycatch monitoring programs, and experimental trials to develop marine mammal bycatch mitigation devices.

The rate of response by nations also declined during 2020. In 2019, 96 out of approximately 130 trading partners submitted progress reports in compliance with the MMPA Import Provisions. In 2020, only 85 nations submitted updates to their LOFF. Approximately 55 nations (or economies) did not update the information in their LOFF.¹ More than 17 nations requested that the deadline for the submission of updates to their LOFF be extended or expressed concern about being able to meet the deadline due to operational disruptions attributable to the pandemic. For the 55 nations that did not

¹ See 85 FR 22290, October 8, 2020 for a list of nations.

respond, we cannot determine if extenuating circumstances affected their ability to update their LOFF. Given these impacts, providing nations with additional time to implement the MMPA Import Provisions will result in fewer disruptions to international seafood trade and a more predictable impact to U.S. seafood wholesalers and retailers when the regulation enters into full effect.

Modification to the Deadline for Comparability Finding Applications

The MMPA Import Provisions establish March 1st of the year when the “exemption period or comparability finding is to expire” as the deadline by which a harvesting nation must submit to the Assistant Administrator an application for each of its export and exempt fisheries. This application requires the nation to submit documentary evidence demonstrating that the harvesting nation has met the conditions specified in the MMPA Import Provisions to receive a comparability finding, including reasonable proof as to the effects on marine mammals of the commercial fishing technology in use in the fishery for fish or fish products exported from such nation to the United States.

According to the MMPA Import Provisions, NMFS must conduct comparability findings for all 953 exempt and 1,852 export fisheries on the LOFF. For exempt fisheries, the nation need only demonstrate that they prohibit the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations or have procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal. For export fisheries, NMFS must undertake a detailed evaluation of the regulatory program governing that fishery and determine whether that program is comparable in effectiveness

to the U.S. regulatory program. Currently, the MMPA Import Provisions provide NMFS only eight months from the submission of the comparability finding application to the publication of the Federal Register notice to identify which nations and fisheries have either received or been denied a Comparability Finding and, if denied, the import restrictions associated with those fisheries. Based on NMFS' recent experience reviewing, issuing, and revoking Comparability Findings for certain fisheries of Mexico, this amount of time is insufficient given the number of export fisheries that must be evaluated. By this interim final rule, NMFS would change the deadline for submission of comparability finding applications from March 1 of the year when the exemption period or comparability finding is to expire to November 30 of the preceding year. As a result, the original comparability finding application deadline of March 1, 2021, would move to November 30, 2021, with this interim final rule's extension of the exemption period to December 31, 2022.

Classification

This rule is published under the authority of the Marine Mammal Protection Act, 16 U.S.C. 1371. The NMFS Assistant Administrator has determined that this interim final rule is consistent with the Marine Mammal Protection Act and other applicable laws. Under NOAA Administrative Order (NAO 216–6), the promulgation of regulations that are procedural and administrative in nature are categorically excluded from the requirement to prepare an Environmental Assessment.

Administrative Procedure Act

NOAA finds good cause to issue this interim final rule to extend the exemption period and revise the deadline for applications without advance notice in a proposed rule

or the prior opportunity for public comment, and to make the rule effective immediately without providing a 30-day delay, because of the need to provide exporting nations with sufficient advance notice of the additional time to submit their comparability finding applications. Currently nations must submit their comparability finding applications in a few months by March 1, 2021. Advance notice and prior opportunity for comment, or delayed effectiveness, would not serve the purposes of the extension and would be contrary to the public interest, requiring exporting nations submit incomplete comparability finding applications without sufficient time. This interim final rule extends the comparability finding application deadline until November 30, 2021, and the exemption period until December 31, 2022. These extensions give exporting nations time to gather the needed information and data during the pandemic crisis. Furthermore, any delay in notifying exporting nations may adversely affect U.S. trade. However, NMFS is requesting public comments on this interim final rule and will consider whether any changes are warranted when issuing a final rule.

Executive Order 12866

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This interim final rule contains no new or revised collection-of-information requirements subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Marine Mammals, Reporting and recordkeeping requirements.

Dated: October 26, 2020.

Paul N. Doremus,
Deputy Assistant Administrator for Operations,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING
OF MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 216.3, revise the definition for "Exemption period" to read as follows:

§ 216.3 Definitions.

* * * * *

Exemption period means the one-time, six-year period that commences January 1, 2017 and ends December 31, 2022, during which commercial fishing operations that are the source of exports of commercial fish and fish products to the United States will be exempt from the prohibitions of § 216.24(h)(1).

* * * * *

3. In § 216.24, paragraphs (h)(6)(i) and (h)(8)(v) are revised to read as follows:

**§ 216.24 Taking and related acts in commercial fishing operations including tuna
purse seine vessels in the eastern tropical Pacific Ocean.**

* * * * *

(h) * * *

(6) * * *

(i) *Procedures to apply for a comparability finding.* On November 30 of the year prior to when the exemption period or comparability finding is to expire, a harvesting nation, shall submit to the Assistant Administrator an application for each of its export and exempt fisheries, along with documentary evidence demonstrating that the harvesting nation has met the conditions specified in paragraph (h)(6)(iii) of this section for each of such fisheries, including reasonable proof as to the effects on marine mammals of the commercial fishing technology in use in the fishery for fish or fish products exported from such nation to the United States. The Assistant Administrator may require the submission of additional supporting documentation or other verification of statements made in an application for a comparability finding.

* * * * *

(8) * * *

(v) *Renewal of comparability finding.* To seek renewal of a comparability finding, every 4 years or prior to the expiration of a comparability finding, the harvesting nation must submit to the Assistant Administrator the application and the documentary evidence required pursuant to paragraph (h)(6)(i) of this section, including, where applicable, reasonable proof as to the effects on marine mammals of the commercial fishing technology in use in the fishery for fish or fish products exported to the United States, by November 30 of the year prior to the expiration date of its current comparability finding.

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